

Federal Communications Commission

DA 00-143

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
 )  
Amendment of Section 73.202(b), ) MM Docket No. 98-176  
Table of Allotments, ) RM-9363  
FM Broadcast Stations. )  
(Killeen and Cedar Park, Texas )

**REPORT AND ORDER**  
**(Proceeding Terminated)**

Adopted: January 19, 2000

Released: February 2, 2000

By the Chief, Allocations Branch:

1. In response to a Petition for Rule Making filed by LBJS Broadcasting Company, LP (LBJS"), the Chief, Allocations Branch, has before it for consideration the Notice of Proposed Rule Making, 13 FCC Rcd 18790 (1998), requesting the reallocation of Channel 227C from Killeen, Texas, to Cedar Park, Texas, and modification of the license for Station KLNC(FM) to specify Cedar Park as the community of license.<sup>1</sup> The Notice also requested comments on whether the policy established in Newnan and Peachtree City, Georgia, 7 FCC Rcd 6307 (Allocations Branch 1992), should be continued and whether it should be extended to post-1964 FM stations that are not now in conformity with our current spacing requirements. LBJS filed supporting comments in which it reaffirmed its interest in Channel 227C at Cedar Park. GulfStar Communications Killeen Licensee, Inc. ("GulfStar"), Texas Star Radio, Inc. ("Texas Star") and Cen-Tex Media, Inc. ("Cen-Tex") and Fuller-Jeffrey Radio of New England, Inc. ("Fuller-Jeffrey") filed comments. Reply comments were filed by LBJS and GulfStar.<sup>2</sup>

2. In Newnan and Peachtree City, Georgia, 7 FCC Rcd 6307 (Allocations Branch 1992), the Chief, Allocations Branch, reallocated Channel 244A from Newnan to Peachtree City as a first local service and modified the license of Station WMKJ(FM) to specify Peachtree City as the new community of license. Although Station WMKJ(FM) did not propose to change its technical facilities, Station WMKJ(FM) was a pre-1964 "grandfathered" station that was short-spaced to another pre-1964 "grandfathered" station. This proposal was granted over the objection that it would create a short-spaced allotment in violation of the minimum distance separation requirements set forth in Section 73.207 of the Commission's Rules because no new short spacings were created, no existing

<sup>1</sup> The call sign was changed from KAJZ to KLNC effective October 5, 1998.

<sup>2</sup> Late-filed supplemental comments were filed by LBJS to which CapStar Royalty II Corp. ("CapStar"), successor to GulfStar, responded.

short spacings were exacerbated, and the potential for interference between the currently short-spaced stations would not be increased. In the instant case, Station KLNC(FM), Channel 227C, Killeen, is a pre-1964 "grandfathered" station and is short-spaced by 55.1 kilometers to co-owned Station KLBJ(FM), Channel 229C, Austin, Texas, which is also a pre-1964 "grandfathered" station. In addition, station KLNC(FM), Channel 227C, Killeen, is short-spaced to three other FM stations because of construction permit applications granted to stations using the contour protection and directional antenna provisions of Section 73.215 of the Commission's Rules. Specifically, Station KLNC(FM) is short-spaced by 11.5 kilometers to Station KSTV(FM), Channel 226C3, Dublin, Texas, by 18.3 kilometers to Station KPLV(FM), Channel 227C1, Port Lavaca, Texas, and by 4.2 kilometers to Station KKZN(FM), Channel 227C2, Haltom City, Texas, and these three stations are providing contour protection under Section 73.215 to Station KLNC(FM) as if they were fully-spaced stations.

3. The proposed reallocation of Channel 227C from Killeen to Cedar Park, Texas, was filed pursuant to the provisions of Section 1.420(i) of the Commission's Rules, which permit the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990) ("Change of Community"). Cedar Park was incorporated in 1973 and has a population of 5,161 according to the 1990 U.S. Census.<sup>3</sup> Cedar Park has its own local government which consists of nine departments, a fire and police department, parks, schools, court system and businesses which include banks, insurance companies, restaurants, a local newspaper and Chamber of Commerce, as well as a local post office and a separate zip code (78613).

4. LBJS states that the proposed reallocation would provide a preferential arrangement of allocations as Cedar Park will gain its first local aural transmission service with Killeen continuing to be served by local Stations KRMV(AM), KNCT(FM) and KIIZ(FM). Further, since no site change or facility change is anticipated, LBJS points out that Station KLNC(FM) will continue to provide city grade service to Killeen. LBJS states that Station KLNC(FM) is a pre-1964 "grandfathered" short-spaced station and since no site change is contemplated, there will be no new short-spacings created, nor an increase in any existing short-spacings as a result of the proposed reallocation. In response to the Notice, LBJS supports continuation of the policy set forth in Newnan and Peachtree City, Georgia, and application of the policy to this proceeding.

5. TexasStar, licensee of Station KKZN, Haltom City, Texas, and Cen-Tex, licensee of Station KSTV, Dublin, Texas, filed joint comments in support of the proposed relocation of Station KLNC(FM) from Killeen to Cedar Park which involves pre-existing short-spacings to both Stations KKZN and KSTV. In response to the Notice, TexasStar and Cen-Tex state that it is wrong for the Commission to treat a request by an existing short-spaced station to change its community of license as

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<sup>3</sup> LBJS, in comments, stated that Cedar Park has a population of 14,000 as of 1995 which is an increase of 180% from the 1990 U. S. Census population figures.

a new allotment, as the station is making a major change in its facilities and should be governed by current Commission Rules as set forth in Sections 73.213 and 73.215 for these types of changes. Further, TexasStar and Cen-Tex argue that the Commission should not limit this policy to pre-1964 grandfathered short-spaced stations and that the same rationale should apply to stations that are short-spaced regardless of the reason. TexasStar and Cen-Tex point out that in a Petition for Rule Making (RM-9395) filed by USA Digital Radio Partners, L.P., (See Public Notice DA 98-2244, released November 6, 1998), to permit the introduction of digital audio broadcasting, statistics were provided showing that out of approximately 5,600 commercial FM stations licensed in the United States, approximately 3,280 stations (60%) have at least one short spacing. TexasStar and Cen-Tex argue that the ability to change community of license should not be based on whether the station was in operation prior to 1964 or was "victimized" by another station causing the short spacing by a move pursuant to Section 73.215 of the Rules.

6. Fuller-Jeffrey, licensee of Station WPKQ, Berlin, New Hampshire, urges the Commission to grant the request of LBJS to change the community of license for Station KLNC(FM) and leave the policy established in Newnan and Peachtree City intact. Fuller-Jeffrey points out that its interest in this proceeding is to protect the policy adopted in Newnan and Peachtree City as Fuller-Jeffrey is currently involved in a rule making proceeding in MM Docket No. 97-216 requesting the reallocation of Channel 279C from Berlin, New Hampshire, to North Conway, New Hampshire, and modification of its license for Station WPKQ.<sup>4</sup> Fuller-Jeffrey states that its proceeding in MM Docket No. 97-216 is similar to the instant proceeding involving Killeen and Cedar Park as both cases involve pre-1964 short-spacings in which the affected station does not propose to modify its transmitting facilities.

7. GulfStar, licensee of Station KIIZ, Killeen, Texas, requests that the LBJS Petition be denied. GulfStar points out that the proposed reallocation of Channel 227C from Killeen to Cedar Park is not only short-spaced to pre-1964 grandfathered short-spaced Station KLBK, but also to Station KSTV, Dublin, Texas, Station KPLV, Port Lavaca, Texas, and to Station KKZN, Halton City, Texas. GulfStar notes that this proceeding raises the question of whether the policy articulated in Newnan and Peachtree City should be extended to allow new allotments that carry over violations of Section 73.207 with respect to post-1964 FM stations that are not now in conformity with the Commission's current spacing requirements. According to GulfStar, LBJS's proposal allows a more lenient allotment separation requirement which implies that the Table of Allotments is unimportant and unnecessary. GulfStar states that the policy in Newnan and Peachtree City was aimed exclusively at pre-1964 grandfathered stations, while grant of LBJS's proposal would constitute a revised allocation approach disturbing the public interest goal of an interference-free FM service.

8. In reply comments LBJS argues that GulfStar's objections to the Cedar Park allotment concern

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<sup>4</sup> At the time that Fuller Jeffrey filed its comments in this proceeding, its own proposal in MM docket 97-216 was pending. Thereafter, the Chief, Allocations Branch adopted this proposal, permitting a reallocation and change of community proposal involving pre-1964 grandfathered short-spaced stations. See Report and Order in MM Docket No. 97-216, Berlin and North Conway, New Hampshire, DA No. 99-1839, released September 10, 1999.

competition rather than the integrity of the FM band. LBJS points out that GulfStar will not suffer any adverse consequence as a result of the reallocation and none of the stations actually involved in the short-spacings have submitted any opposition to the proposed change. LBJS alleges that since no technical modifications to the KLNC facilities are proposed, there will be no impact whatsoever on the integrity of the Table of Allotments because regardless of whether Channel 227C is retained in Killeen or allotted to Cedar Park, the allotment will continue to be short-spaced. The benefit of providing a first local service at Cedar Park, therefore, can be achieved without harming the public interest, asserts LBJS.

9. GulfStar, in reply comments, alleges that it has demonstrated that grant of the LBJS proposal would seriously undermine the Commission's policies and objectives as contained in the FM Table of Allotments and Section 73.207 of the Commission's Rules. GulfStar points out that while three other parties filed comments in response to the Notice, only one party discusses the merits of extending the policy established in Newnan and Peachtree City to post-1964 grandfathered short-spacings. GulfStar states that TexasStar and Cen-Tex comment that they believe that all community reallocations should be allowed so long as the proposed reallocation complies with the Commission's technical rules. GulfStar argues that one of the fundamental purposes of the FM Table of Allotments has been to prevent the migration of rural stations into more populated areas. GulfStar believes that if LBJS's proposal is granted not only will the integrity of the FM Table be disturbed by allowing short-spacings to be carried over into new allotments but also there will be an opportunity for community of license changes to be used merely as devices to enable the migration of stations into urbanized areas.

#### Discussion.

10. After a review of the comments filed in this proceeding, we believe that it is in the public interest to reallocate Channel 227C from Killeen to Cedar Park and to change Station KLNC(FM)'s community of license to Cedar Park. To begin with, in Newnan and Peachtree City, the Chief, Allocation Branch reallocated Channel 244A from Newnan to Peachtree City and modified the license of Station WJKJ to specify Peachtree City as the new community of license. Station WJKJ was a pre-1964 "grandfathered" station that did not meet the current spacing requirements set forth in Section 73.207 of the Commission's Rules. While we recognized that we were authorizing a short-spaced allotment by granting the community change, no change in class or transmitter site was requested; and, therefore no additional or new short spacing was created. Here, as in Newnan and Peachtree City, Station KLNC is short-spaced to another pre-1964 short-spaced station, Station KLBK. We recently reaffirmed our view in Newnan and Peachtree City that pre-1964 grandfathered short-spacing is permissible at the allotment stage. See Oceanside and Encinitas, CA, MM Docket 99-170, DA 99-1837, released September 10, 1999, and Berlin and Conway, New Hampshire, *supra*, note 4. As stated in Oceanside and Encinitas, the "...rationale for that action was that grandfathered FM stations that were in compliance with the rules when authorized should be afforded the same opportunity to change their community of license as other stations authorized in conformity with our Rules." Oceanside and Encinitas at para. 4. In this situation, pre-existing short-spacings that resulted from changes in the Commission's spacing rules did not prevent a rulemaking petitioner from proposing a change of community of license that utilizes its existing site, does not propose to exacerbate the

existing short-spacings, and is otherwise consistent with our allotment criteria.<sup>5</sup>

11. After reviewing the comments in this proceeding, we believe that a similar approach should be taken with respect to the remaining short-spacings that occur in the present case involving Section 73.215 of the Commission's Rules. In this case, we note that LBJS does not propose to change its technical facilities or to utilize contour protection to any station. Instead, three other stations have been authorized to operate on a short-spaced basis with regard to Station KLNC(FM) pursuant to Section 73.215 of the Commission's Rules and are providing contour protection to Station KLNC(FM) as if it were a fully spaced station. Under these circumstances, where no technical change is proposed by Station KLNC(FM) and where no new short-spacing would be created and no existing short-spacing is exacerbated, we believe that Station KLNC(FM) should be afforded the same opportunity to reallocate its channel and change its community of license as the pre-1964 and the pre-1989 short-spaced stations. To do otherwise would result in preventing a station from changing its community of license where it did not create the short-spacing, even though the change results in a preferential arrangement of allotments.

12. We are not persuaded to deny LBJS's request by Gulfstar's allegations that extending the Newnan and Peachtree City policy to the facts of this case would result in a migration of stations from rural to urban areas. The issue of whether a proposed reallocation and change of community of license would result in the migration of stations from rural to urban areas in violation of Section 307(b) of the Communications Act, especially where no technical change is proposed, is a matter that is best addressed by applying our existing law and policy in this area -- that is, examining whether a suburban community is sufficiently independent of a nearby urbanized area to warrant a first local service preference under our well-established Huntington and Tuck policy and comparing the existing and proposed arrangement of allotments using our FM Priorities. Applying those policies to this particular case, we find that LBJS has demonstrated that Cedar Park, a community of 5,161 individuals, passes the Tuck test. Specifically, LBJS proposes to reallocate Channel 227C and to change its community of license from Killeen, which itself is an Urbanized Area, to Cedar Park which is a community located within the Austin, Texas Urbanized Area. It has demonstrated that Cedar Park has its own local government which consists of nine departments, a fire and police department, parks, schools, court system and businesses which include banks, insurance companies,

restaurants, a local newspaper and Chamber of Commerce, as well as a local post office and a separate zip code (78613). Consequently, a reallocation of Channel 227C to Cedar Park should be considered as a first local service under Priority (3) of the FM Priorities.<sup>6</sup>

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<sup>5</sup> Likewise, if there had been any pre-1989 short-spacings involved in this proceeding, they would also be permissible because we recently extended the Newnan and Peachtree City policy to that class of short-spacings for the same reasons. See Fremont and Holton, Michigan, DA No. 99-2095, released October 8, 1999.

<sup>6</sup> The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local

13. By way of comparison, retaining Channel 227C at Killeen would trigger priority 4, other public interest matters, because it would be a fourth local service to Killeen. It is well established under Commission precedent that a first local service to a community under priority 3 is to be favored over a fourth local service to a community. Consequently, we will grant LBS's proposal because it will result in a preferential arrangement of allotments. However, we are concerned with the migration of FM stations from rural to urban areas and the availability of local radio service in rural areas. Thus, we intend to examine on a case-by-case basis other rulemaking proposals where a station seeks to change its community of license from a rural to a suburban community and where there are short-spacings authorized under Section 73.215 of the Commission's Rules.

14. An engineering analysis has determined that Channel 227C can be allotted to Cedar Park, Texas, at the station's current transmitter site.<sup>7</sup> From this site, Station KLNC(FM) will remain short spaced to Station KSTV, Channel 226C3, Dublin, Texas, Station KPLV, Channel 227C1, Port Lavaca, Texas, Station KKZN, Channel 227C2, Haltom City, Texas, and Station KLBK, Channel 229C, Austin, Texas. In granting LBS's request for a change of community, LBS will be required to specify its current licensed site for Station KLNC(FM), Killeen, in any license application for Station KLNC(FM), Channel 227C, Cedar Park, Texas, to implement this proposal. In accordance with Section 1.420(i) of the Commission's Rules, we will modify Station KLNC(FM)'s authorization to specify operation on Channel 227C at Cedar Park, Texas, as its new community of license.

15. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective March 20, 2000, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

Community	Channel No.
Cedar Park, Texas	227C
Killeen, Texas	222A

16. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the License of LBS Broadcasting Company for Station KLNC, Channel 227C, Killeen, Texas, IS MODIFIED to specify operation on Channel 227C at Cedar Park, Texas, subject to the following conditions:

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service; and (4) other public interest matters (co-equal weight is given to priorities (2) and (3)).

<sup>7</sup> The coordinates for Channel 227C at Cedar Park are 30-43-34 and 97-59-23. Since no change in transmitter site is contemplated, concurrence of the Mexican Government is not required for the reallocation of Channel 227C from Killeen to Cedar Park.

(a) Nothing contained herein shall be construed as authorizing any change in license BMLH-920423KD except for the community as specified above. Any changes, except those specified, require prior authorization pursuant to an application for construction permit. (FCC Form 301).

(b) A license application should be filed to implement this proposal as approved above.

17. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, LBJS Broadcasting Company, LP, licensee of Station KLNC(FM), is required to submit a rule making fee in addition to the fee required for the application to effect the change in community of license.

18. IT IS FURTHER ORDERED, That the Secretary shall send a copy of this Report and Order by Certified Mail, Return Receipt Requested, to the following:

Cen-Tex Media, Inc.  
Station KSTV (Dublin)  
3209 West Washington Street  
Stephensville, Texas 76401

Victoria Radio Works, LTD  
Station KPLV (Port Lavaca)  
8203 Vantage Drive, Suite 840  
San Antonio, Texas 78230

Texas Star Radio, Inc.  
Station KKZN (Haltom City)  
P. O. box 2026  
York, Pennsylvania 17401

19. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

20. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

**FEDERAL COMMUNICATIONS COMMISSION**

**John A. Karousos**  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau